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28 November 1977

MEMORANDUM FOR: Legislative Counsel

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FROM : [REDACTED]

SUBJECT : Meeting of Executive Committee for Combating Terrorism, 23 November 1977

PARTICIPANTS : State Ambassador Heyward Isham, Chairman
Justice Thomas Crockett
Defense BGen. James M. Thompson
JCS RAdm. Mark P. Frudden
Treasury Richard Davis, J. Robert McBrien
Transportation Daniel A. Ward
Energy H. Laessle Taylor
NSC Col. William Odom
Commerce Elizabeth Godley
Ed Henriksen
NRC Robert Burnett
Joe Yardumian
OMB Daniel H. Taft

The main subject of the meeting was the Ribicoff Bill and Ambassador Isham's office is responsible for preparing the official minutes which I will get to you as soon as I receive them. In the interim, here is a brief report on what transpired to keep you up to date.

1. Isham reported that Senator Sparkman has asked for a coordinated response from the Executive Branch and OMB has agreed that the Executive Committee will be the focal point for coordinating that response.

2. The Department of Justice tabled its letter of 23 November to Isham as being its preliminary analysis of the Ribicoff Bill (attached).

3. Paragraph 3 of your letter to me pointing up our concern with protection of sources and methods was noted and accepted.

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4. On the subject of the mandatory sanctions as required in the Ribicoff Bill, both State and Justice expressed concern, with Justice commenting on this issue in their letter to Isham.

5. Isham concluded by stating that the problem is to decide what kind of bill would be useful and workable since he is convinced that pressure in the Senate is so strong that some kind of legislation will inevitably be adopted. Therefore, a working group was established under State's leadership to include Treasury, Justice and Transportation. Since our views were accepted I saw no need for Agency representation in this working group and our participation is not required at this time.

I attach also a summary prepared by State of the positions taken by the member agencies of the Executive Committee on the various provisions of the Ribicoff Bill.

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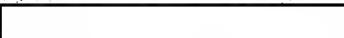


Attachments:

1. Justice Letter, 23 November 77
2. Summary of Positions

cc: C/PCS/ITC

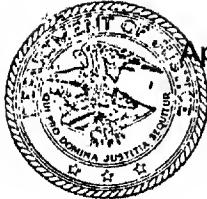
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OFFICE OF THE DEPUTY ATTORNEY GENERAL

WASHINGTON, D.C. 20530

November 23, 1977

Honorable Heyward Isham
Director
Office for Combating Terrorism
U. S. Department of State
Room 2238
2201 C Street, N.W.
Washington, D. C. 20520

Dear Ambassador Isham:

The Department of Justice is in the process of analyzing the full impact of the proposed Ribicoff Legislation entitled "Omnibus Anti-Terrorist Act of 1977". Our analysis is not yet completed. However, it does not appear that the Department of Justice will be able to support this legislation. The bill removes all flexibility from U. S. foreign policy and probably insures non-cooperation from other countries in the world. Moreover, it appears to place constitutionally impermissible strictures on the President's responsibilities for the conduct of foreign affairs. For example, it purports to authorize a one-house blacklisting or delisting of a particular country exceeding, in our view, the boundaries set by the constitutional principle of separation of powers (sec. 105.)

The bill takes a blunderbuss approach to terrorism at a time when the Executive Branch is attempting, through a revision of Executive Order 11905, to define the responsibilities of various agencies in this field and set limits on the techniques they may employ. Similarly, the Select Committee on Intelligence in the Senate is attempting to deal with matters of international terrorism through its preparation of charters for the intelligence community and the intelligence agencies. Any efforts in this area should be coordinated.

The definition of terrorism in the bill is broad enough to encompass civil war within a particular country and thus will raise real problems as to what properly constitutes terrorism



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sufficient to bring down the sanctions of the bill. Not all countries view the same acts in the same manner. Cuba, for example, may view the Bay of Pigs invasion or the attempted assassination of Castro to be acts of terrorism but this country is providing "safe haven" to persons who engaged in those activities. Similarly, we have provided "safe haven" to Hungarian Freedom Fighters of the fifties even though the present Hungarian government may view them as terrorists. We have also granted "haven" to defectors who have hijacked small aircraft to come to this country and aided and abetted the Japanese in giving haven to the soviet pilot who flew the MIG plane to Japan. As the bill is drafted, these actions would justify the rest of the world in cutting the United States off from trade, commerce and air travel.

Section 104 of the bill would require public reports to the Congress of terrorism investigations unless publication would jeopardize an informant or compromise a covert intelligence operation. Withholding of information would apparently not be permitted in circumstances in which it would jeopardize an investigation or prosecution or disclose confidential grand jury material in violation of Rule 6(e) of the Federal Rules of Criminal Procedure. Important and sensitive cases such as the Letelier investigation would be jeopardized, if not aborted, by such a requirement.

Section 104(b)(2) would impose sanctions on any country which grants "safe haven" to a terrorist. This raises the question as to whether failure to have an extradition treaty with the United States would be providing a "safe haven" within the meaning of the treaty.

Section 105 would cut off air traffic to any country which supports terrorism and is therefore unsafe for Americans to live in. How will the Americans get home from the unsafe country if air traffic is cut off?

Section 105(a)(4) excludes from the United States any person coming from a blacklisted country. We have grave doubts that the United States can exclude an American from returning home because he has exercised his constitutional right to travel. Deportation (or this equivalent) for American citizens has never been permitted except in Edward Everett Hale's Man Without a Country. Section 105(a) would also appear to mandate that other countries perform baggage inspection and plane inspection on behalf of the United States regardless of whether they have

the inclination, the personnel, the equipment or the funds.

The Sections concerning dangerous foreign airports (Section 107 and 108) likewise appear troublesome. Unless a foreign airport meets U.S. safety criteria, all commercial air service between that airport and the United States is banned. Even indirect service from that airport by air carriers of that country or the United States is prohibited.

Furthermore, Section 107 apparently assumes a right on the part of the United States and its personnel to inspect foreign airports at will. We suspect that most sovereign nations are unlikely to concede this right on our part. Consequently, a probable effect of the bill would be to isolate the U.S. from the rest of the world or increase sea travel immensely.

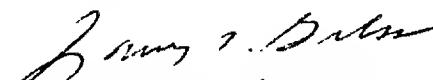
We defer to Department of State concerning the reorganization within that Department mandated by Title II of the bill. However, Title III's creation of a new component in the Department of Justice entitled "Office for Combating Terrorism" under an Assistant Attorney General, is in our opinion unnecessary and undesirable. The Deputy Attorney General, has at his disposal all components of the Department of Justice needed to coordinate the Department's involvement in anti-terrorism efforts.

Regarding Title I, we do not see the advantage in creating by statute a Council to Combat Terrorism. The administratively created NSC/SEC working group on terrorism, created after several months of review under PRM-30, should be adequate to furnish executive leadership and assure coordination on this subject. At any rate, the new structure should at least be given an opportunity to function, prior to creation of a new unit.

The Department strongly supports Title IV which in substance corresponds directly with its legislative proposal to implement the Montreal Convention and otherwise improve airport safety. The Department's legislative proposal was cleared by the Office of Management and Budget and was formerly submitted to Congress on November 11, 1977.

As we develop other thoughts regarding this legislation, they will of course be forwarded to you.

Sincerely,



Larry S. Gibson
Associate Deputy Attorney General

Section 3 - Declaration of Findings

State: Fully endorses and shares the objectives of this proposed legislation with respect to the serious threat to human life posed by terrorist acts.

Section 4 - Declaration of Purposes

Treasury: Believes Section 4(h) and Section 102(d) recognize critical area of terrorism intelligence and supports, as a minimum, a Congressional call for major improvements in USG capabilities.

Section 5 - Definitions

DOD: Suggests enlarged definition of terrorism:

"(a) 'terrorism' for the purposes of this Act includes but is not limited to the willful use of violence, or the threat of violence to obtain political goals, or to seek other goals by acting through, imposing upon, or compelling members of the public including public officials to serve such goals, through instilling fear, intimidation or coercion."

- Sec. 101 - Establishment of a Council to Combat Terrorism
- Sec. 102 - Council Functions
- Sec. 103 - Council Membership
- Sec. 109 - Transfer to Existing Functions and Property

General: The consensus is that these sections already have been implemented in large part by the Executive Branch by the establishment of the NSC/SCC Working Group and its Executive Committee under the direction of the Assistant to the President for National Security Affairs.

CIA: Section 102(d) is already being addressed through recent developments in the organization and management of foreign intelligence activities in support of U.S. counter-terrorism programs, i.e. PRM-30, the intelligence subcommittee of the Critical Collection Problems Committee, and the proposed new Executive Order governing U.S. foreign intelligence.

Treasury: The Executive's new organizational arrangement could be endorsed by a Senate Resolution. See also earlier comment on Section 102(d) made under Section 4.

DOD: Objects to possible "Council" authority to evaluate military plans to combat terrorism, if covered under Section 102(e).

NRC: Supports objective of Section 102(d) from a nuclear safeguards perspective.

State: The NSC/SCC Working Group could be codified by statute and redesignated as the Council to Combat Terrorism.

Section 104 - Report on Terrorist Enterprises

CIA and DOD: Are concerned that this may raise problems involving disclosures CIA wants a broader exception clause allowing classified reports of intelligence sources and methods.

DOT: Supports idea of terrorist incident reporting and has so recommended to the NSC. DOT believes legislation is not required.

State: Believes formalized, incident-by-incident reporting requirements of Section 104 are unduly burdensome. The Working Group now produces a quarterly, unclassified summary of significant international terrorist incidents which could be expanded, if necessary, to meet the Congressional requirements. Re CIA, DOD concern on classified reports: If Section 104 were enacted, State believes exceptions to unclassified reports noted in 104(c) are sufficiently broad to protect sources and programs.

Treasury: Supports Section 104.

Section 105: List of countries aiding terrorist enterprises (LOCATE)

State:

Section 106 - Sanctions Against Countries Aiding Terrorist Enterprises

General: Discretionary authority to apply sanctions is preferable to mandatory sanctions in the bill.

DOT: Existing law provides for discretionary aviation sanctions.

DOE: Section 106(a)(9) is already covered by pending Nuclear Anti-Proliferation legislation before Congress which has passed the House, been reported favorably by the Senate Foreign Relations Committee and is supported by the Administration.

NRC: Deletion of Section 106(a)(9) is recommended. The ban on nuclear exports is artificially included on the list of sanctions and would be difficult to administer. Many other types of licensed exports are of equal or greater national security concern.

State: Section 106(4) regarding passport visas is an inappropriate sanction against innocent parties and does not stand good chance of influencing the governments concerned.

Section 107 - List of Dangerous Foreign Airports

DOT: Foresees problems of legal access to foreign airports for inspection purposes and prefers using ICAO to develop a list of countries filing "differences" with the newly proposed screening standard.

State: Questions whether legal access argument advanced by DOT is sufficient basis for assuming those legislative proposals cannot be effectuated. However, State believes that US experts could not be expected to evaluate every airport in the world. State suggests that heading "Dangerous Foreign Airports" be retitled to "Security Deficient Foreign Airports."

Treasury: Supports Section 107.

Section 108 - Sanctions Against Dangerous Foreign Airports

DOT: Existing legal authority provides for sanctions on airlines of nations with security standards below ICAO minimum. DOT believes cooperative assistance more effective than sanctions approach.

Treasury: Defers to DOT regarding best means for improving security at foreign airports. However, Treasury believes consideration must be given to restrictions on travel to and from such terminals if voluntary compliance fails.

Sec. 201 Establishment of a (State) Bureau for Combating International Terrorism

Sec 202 Bureau functions

State: developing position

Section 203 - Priorities for Negotiation of International Agreements

DOD: Section 203(b)(1) establishing an international working group is vague regarding what authority it would have.

DOE: Section 203(b)(4) already covered by pending nuclear anti-proliferation legislation now before Congress. Also concerned about piecemeal legislative efforts on non-proliferation policy impairing development of comprehensive approach.

State: is actively engaged in various diplomatic efforts to achieve most of the objectives set forth in Sec. 203, with the exception of establishing a permanent international working group. Department of State will explore the feasibility of such a body.

NRC: Supports Section 203(b)(1) and 203(b)(4) from a nuclear safeguards perspective. Generally supports the provisions of Section 203(b)(4)(A) and (B).

Treasury: Re Section 203(b)(4)(C), exceptional care should be exercised regarding long range stability and trustworthiness of governments with which we exchange information regarding physical security for nuclear nonproliferation purposes.

Section 204 - Implementation of Montreal Convention

General: Legislative proposals submitted by Attorney General to both Houses in November 1977.

DOT: Recommends this be handled separately from S.2236 to expedite.

State: Has no objection to inclusion in S.2236. It might be well to have this legislation advanced through as many committees as possible since it has not been acted upon when submitted in previous sessions of Congress.

Treasury: Defers to Justice and Transportation on best means of achieving these legislative objectives.

Section 303 - Extension of Existing Safety and Security
Measures

DOT: Regarding air charter security, FAA has sufficient authority and is reevaluating the need to extend security requirements to supplemental air carriers.

Section 304 - Mandatory Use of Explosive Taggants

DOT: Supports concept but notes that primary DOT objective is detection of explosives on aircraft before explosion. Legislation should address general research on explosive detection.

Treasury: Treasury has already submitted a legislative package which would establish a required system of explosives tagging.

Title IV -- Airport Sabotage and Piracy

DOT: Supports this effort to fill present gaps in ability to prosecute aviation-related crimes. Notes that the legislative proposal submitted by Attorney General in November 1977 has the same features as Title IV.